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CANADA

In re Application of	:	
Brault et al.	:	
Application No.: 10/585,096	:	DECISION
PCT No.: PCT/CA2005/000018	:	
Int. Filing Date: 07 January 2005	:	ON
Priority Date: 12 January 2004	:	
Attorney Docket No.: 3121-1A-1	:	PETITION
For: Worktable Comprising A Multidirectional Coupling	:	

This is in response to the renewed petition under 37 CFR 1.47(a) filed on 10 September 2008 and the petition for withdrawal of the holding of abandonment filed on 17 September 2008, which is being treated under 37 CFR 1.181.

### DISCUSSION

#### *Petition To Withdraw Holding Of Abandonment*

The Decision mailed on 21 July 2008 set a two-month period for response, extendable under 37 CFR 1.136(a). Nevertheless, on 09 September 2008, a Notice of Abandonment was mailed to applicants, indicating that this application had become "abandoned for failure to timely reply to the Decision on Petition mailed on" an unspecified date. In view of the fact that the period for response will not expire until midnight on 22 September 2008 (21 September 2008 being a Sunday), the Notice of Abandonment was clearly premature, and it is hereby **VACATED**. The holding of abandonment is **WITHDRAWN**.

#### *Renewed Petition Under 37 CFR 1.47(a)*

In the Decision mailed on 21 July 2008, the petition under 37 CFR 1.47(a) filed on 14 May 2008 was dismissed, without prejudice, because

Regarding **requirement (2)**,... Petitioner provides an "Affidavit of Mrs. Annie Roy" in which Mrs. Roy states that an assignment was transmitted to Mr. Brault's residence but he failed to execute and return it. Ms. Roy concludes, after recounting certain background facts, that "I believe it will be impossible to obtain Mr. Brault's signature for the transfer of the entire right, title and interest in the invention to Triangle." However, Mrs. Roy does not address the issue of whether Mr. Brault has refused to execute an oath or declaration directed toward the instant application after being presented with a complete copy of the application papers. It is also noted that the French language letter from Mrs. Roy to Mr. Brault is not accompanied by an English translation. For these reasons, it would not be appropriate to conclude that requirement (2) has been satisfied at this time.

Regarding **requirement (4)**, inspection of the declaration of inventorship filed on 14 May 2008 reveals that it has been signed by joint inventors Roy and Krick on behalf of themselves and Jean Brault. However, petitioner's attention is respectfully drawn to 37

CFR 1.69(b)... The declaration alludes to the February 1998 version of form "PTO/SB/105 (2-98)," but it does not appear to be identical to the February 1998 version of Form PCT/SB/105 available at the USPTO.gov web site. Petitioner is required to explain whether the form used was in fact provided by the USPTO, and/or provide the required statement that the translation is accurate.

In response, regarding requirement (2), petitioner has provided an "Affidavit of Mrs. Annie Roy," who states in part that

On August 14<sup>th</sup>, 2008, a declaration and Power of attorney form directed toward the instant patent application and a complete copy of the patent application papers were transmitted to Mr. Jean Brault's residence and the document reception was acknowledge on August 15<sup>th</sup>, 2008. Within the 15 days window allowed for return, Mr. Brault has not returned to us any such declaration and power of attorney."

Said affidavit is accompanied by a copy and translation of a letter to Mr. Brault signed by Mme. Annie Roy and dated 13 August 2008. Also provided is a copy of a postal report, without a translation. Assuming *arguendo* that the letter dated 13 August 2008 is the same letter as referred to by Mrs. Brault in her "Affidavit," it is not clear that the period provided for response would have been adequate for Mr. Brault to read the contents of the letter, decide whether to execute the application, and return the declaration. Since it is not clear that the time period allowed was reasonable under the circumstances, it would not be appropriate to conclude at this time that Mr. Brault's failure to return the executed declaration within that time should be construed as a refusal within the meaning of 37 CFR 1.47(a).

Regarding requirement (4), petitioner has provided a statement that "the French language section of the bilingual French language declaration form used as the Declaration of ownership filed on May 2<sup>nd</sup>, 2008 is an accurate translation in French of the original English language section thereof." Petitioner should clarify whether this statement pertains to the declaration filed on 30 June 2006, the declaration filed on 14 May 2008, neither or both.

### **DECISION**

The petition under 37 CFR 1.181 is **GRANTED**.

The petition under 37 CFR 1.47(a) is **DISMISSED**, without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." Extensions of time may be obtained under 37 CFR 1.136(a). Failure to timely file a proper response will result in **ABANDONMENT**.

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the Office of PCT Legal Administration.

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